THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 25760 Of 2003

20th December, 2006.

Between:

Madhava Chary, s/o: Anantha Chary,
Aged about 68 years, occ: idle,
R/o: 7-43, Ananth Giri Temple,
Rajendernagar Mandal,
Ranga Reddy District. ..Petitioner

A N D

1. The Joint Collector,
Ranga Reddy District and Others …Respondents.

THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 25760 Of 2003

ORDER:

1. Petitioner filed this writ petition to declare the action of Joint Collector in passing the order dated 13-09-2003 in Proceedings NO. D5/5814/1998 and D5/3727/2000, as arbitrary, illegal and violative of articles 14 and 21 of the Constitution of India.

2. The petitioner has given his sworn affidavit in support of the writ petition. The case of the petitioner as set out in the writ affidavit in brief is:-

Raghava Chary, the grand father of the petitioner was the owner of land bearing Survey No. 365 admeasuring Ac. 6-02 guntas of Attapur village, Rajender Nagar Mandal, Ranga Reddy District. The Vasool Baki of the year 1344 Fasli and the Sethwar of the year 1343 Fasli show that Raghava Chary was the absolute owner of the land. Further the Khasra Pahany of the year 1953-54 and the entries in Records of Rights disclose the name of the grand father of the petitioner i.e. Raghava Chary as pattadar of the land. In respect of the part of the extent of the land, there was a protected tenant by name Balraj Goud and the entries made in the Protected Tenant register confirm the same. During the life time of the said Balraj Goud, he filed O.S.No.6 of 1989on the file of the District Munsiff West and South, Ranga Reddy District, against the petitioner and others. Consequent on the death of original protected tenant- Balraj Goud, his legal heirs Smt. Maniamma and others surrendered their protected tenancy rights

in favour of the petitioner and others. The said surrender was accepted by the Mandal Revenue Officer, Rajendernagar Mandal, by order dated 26-2-2000 passed in file No.B/478/2000. Prior to the said surrender, succession was granted in favour of the legal heirs of protected tenants by the Mandal Revenue Officer in proceedings No. D/32551/89, dated 09-02-1990. The petitioner, on coming to know of certain mistaken entries had crept in ROR Records, presented an application for rectification of the said entries. The Mandal Revenue Officer, Rajender Nagar Mandal, received the said application and numbered as B.5131/94 and after conducting elaborate enquiry and on perusal of records of endowments department, Ranga Reddy District, passed an order on 08-09-1995 granting succession in favour of petitioner in respect of the above land and thereafter mutated the name of the petitioner in Record of Rights. The land bearing Survey Nos. 362 and363 are located adjacent to the land of the petitioner. Since, there is no approach road to the said land, the Principal Chief Conservator of Forest issued G.O.Ms.No. 17 Environment, Forest, Science and Technical (FOR III) Department, dt. 2-7-1996 to acquire part of the land situated in Sy.No. 365 belonging to the petitioner apart from certain other adjacent lands. The petitioner was allotted some land in Sy.No.366/1, which is a Government land, in lieu of the part of the land acquired in Sy.No. 365. The exchange of land is evident by the proceedings issued in file No.B/3932/99, dt. 23-10-1999. The proceedings disclose that an extent of 12 guntas of land in Sy.No.365 belong to the petitioner was taken over and handed over to the Curator, Nehru Zoological Park, Hyderabad. On the death of Raghava Chary, the petitioner's name has been entered in the revenue records as pattadar and enjoyer and a proceeding to that effect was also issued by the Mandal Revenue Officer. The Mandal Revenue Officer issued proceeding in file No. B/5131/94, Dt. 8-6-1995 and granted succession in favour of the petitioner. The present Mandal Revenue Officer without verifying the records addressed a

letter No. D/1964/00 to the Joint Collector, Ranga Reddy District to initiate appropriate action. The 1st respondent in exercise of powers under Section 9 of the A.P.Right in Land and Pattadar Pass Book Act, 1971 granted stay of the proceedings in file NO.B/5131/94, dated 8-6-1995 and issued further direction not be developed or change nature of the land. The application filed by the petitioner to rectify the stray entries and the suomotu revision under Section 9 of the A.P. Right in Land and Pattadar Pass Book Act, 1971 were decided by a common order dated 13-9-2003 in case Nos. D5/5814/1998 and D5/37427/2000, by which the Joint Collector allowed the su-motu revision and dismissed the application filed by the petitioner for rectification. Further, the Joint Collector has directed the Mandal Revenue Officer, Rajendernagar Mandal, Ranga Reddy District, to correct the entries in respect of the land in SurveyNo.365 as Lawaris from 1995 onwards and further ordered for resumption of the land including Ac.0-12 guntas in Survey No.366/1 which was given to the petitioner by the Forest Department in land to land compensation. As per the Sethwar and also Pahani of the year 1953, Raghava Chary was recorded as pattedar of the said land. Thereafter one Ramakrishna Chary was recorded as pattadar for the year 1954-55. The revisional Authority has not considered the proceedings initiated by the revenue authorities at the instance of the Forest Department with regard to acquisition of certain land belonging to the petitioner. Without there being any allegation that the petitioner has played fraud or otherwise, the revisional authority has set aside all the proceedings, which went in favour of the petitioner, after a lapse of a decade.

3. 3rd respondent filed counter affidavit. One A.Ravinder Reddy working as Mandal Revenue Officer in Rajender Nagar Mandal, Ranga Reddy District, has sworn to the counter affidavit. The counter affidavit, in brief, is:-

As per the Sethwar and the Pahani of the year 1953, the Sy.No. 365 admeasuring Ac. 6-02 Guntas is a patta land and it was recorded

in the name of Raghava Chary from the year 1964 onwards. It was recorded as Lawaris/Sarkari upto 1973-74. Some stray entries like Raghava Chary Lawaris and Deval Anantha Swamy have been recorded in the subsequent pahanies. The petitioner is put to strict proof that he is the grand son of original pattadar Raghava Chary. The said original pattadar Raghava Chary died without issues and the land became Lawaris. As per A.P. Board Standing Orders, property real or personal to which there is no legal owner is 'escheat' and belongs to State. In the year 1995-96 the entries have been made in the name of petitioner, i.e. Madhava Chary s/o: Anantha chary as per the proceeding of the then Mandal Revenue Officer No.B/5131/94, dated 8-9-1995. As per village map of Attapur village, tank is existing over the suit land. Therefore the then Mandal Revenue Officer reported to the Collector for taking necessary action. On the representation made by the Principal Chief Conservator of the Forests, government issued G.O.Ms. No.17, Environment, Forest, Science and Technical for III Department, dt. 2-7-1996 to acquire part of the land situated in Sy.No. 365 belonging to the petitioner apart from certain other lands. This was to lay an approach road to the Forest Department Land. The petitioner was allotted some land in Sy.No.366/1 which is a Government land in lieu of the part of the land in Sy.No.365. The petitioner might have been given 0.12 gts. of land in Sy.No.366/1 in lieu of acquired land in Sy.No.365 basing on the wrong entries made by the then Mandal revenue Officer in the year 1995-96. The Joint Collector, Ranga Reddy District, has gone through all the facts and ordered to resume the said land including Ac.0-12 gts. in Sy.No. 366/1 from the petitioner to Government vide Proceedings No. D5/5814/98 and D5/3727/2000, dt. 30-9-2003. The land in Survey No.365 to an extent of Ac. 6-02 guntas of Attapur village was patta land of one Raghava Chary. On the demise of pattadar without legal heirs, the suit land becomes Lawaris and thereby vested with the Government. The suit land became Lawaris in 1960-61. Some stray

entries in the revenue records cannot confer any right on the petitioner. The petitioner has no possession over the land. In fact, the land is situated on the ring road and it is kept vacant since a long time. The Joint Collector has passed orders after thorough perusal of the records. The Joint Collector considered the report of the then Mandal Revenue Officer and issued notice to the petitioner and provided sufficient opportunities to the petitioner to represent his case. Basing on the material brought on record and on considering entries in the revenue records, the Joint Collector passed orders in Case No. D5/5814/98 and D5/3727/2000, dated 13-9-2003 and directed the Mandal Revenue Officer to correct the entries in Sy.No.365 admeasuring Ac.6-02 guntas as Lawaris since 1995-96 and resume the land including of Ac.0-12 guntas in Sy.No. 366/1 of Attapur village from the petitioner. Accordingly, the entries have been corrected in Sy.No.365 as Lawaris/Government on 28-11-2003.

4. Heard learned counsel appearing for the petitioner and learned Government Pleader for Revenue appearing on behalf of the Respondents.

5. Learned counsel appearing for the petitioner submits that the Joint Collector-1st respondent exceeds his jurisdiction in directing the Mandal Revenue Officer-3rd respondent for resuming the possession of the land without resorting to institute a suit for declaration of the Government's right to the property and for recovery of such property and that the possession can be taken only in accordance with such declaration. He further submits that the Joint Collector has erred in not recording any finding as to whether any enquiry held under Section 7 of the A.P.Escheats and Bona Vacantia Act, 1974 or whether there is any proclamation made under the Unclaimed Property Act, 1333 Fasli. Yet another submission has been made by the learned counsel that the respondents have ignored the proceedings initiated at the instance of Forest Department acquiring certain land belonging to the petitioner and that the suo-motu proceedings under Section 9 of the

A.P. Record of Rights in Land and Pattadar Pass Book Act, 1971 can be initiated within reasonable time. In support of his submissions, reliance has been placed on the decision of this Court in ***V.Lingamma Vs. Government of Andhra Pradesh***[1] wherein it has been held that declaring an area of land as that of escheat or bona vacantia unilaterally on the report of an official without conducting an enquiry is Illegal. If any person is found to be in possession of such land, the Government has to file a suit and obtain possession on the basis of a decree passed by Civil Court. It is trite to refer paras 11 and 12 of the above cited judgment and they are:-

> "11. Where as reading of Section 7 of the Act discloses that whenever the local officer receives information from any source that any property of the nature of an escheat or a bona vacantia is situated or lying within his jurisdiction, he shall cause an inquiry to be made in respect thereof. When the report of MRO discloses that the property is not being claimed by the true legal heirs of the original allottee namely, Shaheen Aziz Ahmed and the persons who are claiming do not have any legal rights, the property could not be subject of escheat, but at the most it can be Bona Vacantia. To treat the property as Bona Vacantia it has to be established there is no rightful owner to claim the property. When the petitioners as well as Ali Asgar Seizer claiming title over the properties having purchased from Shaheen Aziz Ahmed and this Court observed that once Plot No.10 which was admittedly belongs to Shaheen Aziz Ahmed cannot be said to have been unidentifiable, simply because petitioners failed to produce the original title deeds, the same cannot be claimed as Bona Vacantia without causing enquiry.
>
> 12. This Court in Narsimha Reddy's (supra) held that without conducting any enquiry as contemplated under Section 12 of the Act, the authorities cannot just come to a conclusion that particularly property is an Escheat or Bona

> Vacantia. In view of the same, on the unilateral report procured, the Joint Collector cannot treat the property in question as escheat or Bona Vacantia without causing an enquiry under Section 7 after due notice to the parties who put up their claims over the property or claiming to be the purchasers of the said property. If it is found that the property of the nature of an Escheat or Bona Vacantia is in the possession of a person who has no authority to claim over the property, the local officer after obtaining sanction of the competent authority institute a suit in a Court for declaration of the Government's right to the property for recovery of possession of such property and only after such declaration by the Court that the property is an escheat or bona vacantia, the local officer can obtain possession and issue notification. Section 9 contemplates where the property of the nature of an escheat or a Bona Vacantia is not in possession of any person or where the person in possession surrenders such possession when demanded, the local officer shall take the property into his custody and arrange for its care and maintenance until the claim is settled under Section 11, namely after taking possession of the property he can issue public notice in such manner as may be prescribed. The very nature of enquiry under Section 7 does contemplate issuance of notice to the parties who are likely to be affected by such declaration. IN view of the same, it is obligatory on the part of the respondents to conduct an enquiry before passing the impugned order".

6. Learned Government Pleader for Revenue appearing on behalf of the respondents submits that the original pattadar Raghava Chary died issueless and his land became Lawaris/Sarkari as per A.P. Board Standing Orders. All properties real or personal to which there is no legal owner became 'escheat' and belong to State. A further

submission has been made that an extent of 0-12 gts. in Survey No. 366/1 has been given to the petitioner basing on the wrong entries made by the then Mandal Revenue Officer in the year 1995-96. The Joint Collector has gone through all the facts and ordered to resume the said land. Some stray entries in the Revenue Record do not confer any right on the petitioner.

7. Indisputedly, Raghava Chary was pattadar for the land bearing Survey No. 365 of Attapur village. One Balraj Goud claimed Tenancy Rights over the said lands and he filed O.S.No.6 of 1989 on the file of the District Munsiff, West and South, Ranga Reddy District and the said suit ended in dismissal. The legal heirs of Balraj Goud also filed petition under Section 32 of A.P. (Telengana Area) Tenancy and Agricultural Lands Act, 1950 for restoration of the possession and the said petition came to be rejected by the Mandal Revenue Officer, Ranga Reddy vide proceeding No. D/664/91, dated 7-8-1993. The petitioner herein filed an application before the Mandal Revenue Officer under the provisions of A.P. Record of Rights in Land and Pattadar Pass Book Act, 1971. He claimed to be adopted son-in-law of Pandu Ranga Chary, who is brother of Raghava Chary, and who died issuless. The Mandal Revenue Officer after conducting enquiry as contemplated under the provisions of the A.P. Rights in Land and Pattadar Pass Book Act, 1971 granted succession in favour of the petitioner under the provisions of the A.P. Record of Rights in Land and Pattadar Pass Book Act, 1971. The relevant portion of the order passed by the Mandal Revenue Officer on 8-9-1995 reads as under:-

> "In view of the above findings the statement given by the petitioner and the proceedings of the then Mandal Revenue Officer, Rajendra Nagar and the Judgment of the Hon'ble Munsiff Magistrate Hyderabad West and South, Ranga Reddy district it is proved that the petitioner Sri Madhavachari is the only legal heir of late Ananthachari Pattadar over the Sy.No.365 admeasuring Ac. 6-02 gts. situated at Attapur

> village and the petitioner and his forefather's have been under the enjoyment of the land. Hence, succession is granted in favour of sri Madhavachari under Section 9 of A.P. Record of Right in Land and Pattadar & Pass Book Act, 1971 as amended in Act, 1989 read with the Rules issued there under, over Ac. 06-02 gts of Sy.No. 365 of Attapur village to record the name of the petitioner as a pattadar and enjoyer. The petitioner is advised to file declaration before the Special Officer, ULC Urban Land Ceiling immediately which he did not do earlier".

8. The petitioner filed an application under Section 9 of the A.P. Record of Rights in Land and Pattadar Pass Books Act,1971 for correction of entries in respect of land bearing Survey No.365 admeasuring Ac.06-02 Gts. of Attapur village and for inclusion of his name. The Joint Collector has taken up suo-motu revision in exercise of powers conferred under Section 9 of the A.P. Record of Rights in Land and Pattadar Pass Books Act on the report of Mandal Revenue Officer, Ranga Reddy dated 9-6-2000. The Joint Collector in exercise of powers conferred on him under Section 9 of the A.P. Rights in Land and Pattadar Pass Books Act ordered resumption of the land including Ac.0-12 Gts. of land in Survey No.366/1 which was given in exchange of certain extent of land in Survey NO. 365. In nutshell the Joint Collector in exercise of powers under Section 9 of the A.P. Record of Rights in Land and Pattadar Pass Books Act, 1971 set aside the order dated 8-9-1995 of the Mandal Revenue Officer, Ranga Reddy passed in Proceeding NO.B/5131/94.

9. The principal grievance of the petitioner is that the petitioner is entitled to claim the properties of Raghava Chary as adopted son-in-law of brother of Raghava Chary. It is the stand of the respondents that as Raghava Chary died issueless, his properties became 'escheat' and vested with the Government. Under Section 7 of the Andhra Pradesh Escheats and Bona Vacantia Act, 1974 whenever the local officer receives information from any source that any property of the

nature of an escheat or a bona vacantia is situated or lying within his jurisdiction, he shall cause an inquiry to be made in respect thereof. There seems to be no enquiry made by the Joint Collector before declaring that the petitioner-Madhava Chary is not entitled to succeed to the properties left by Raghava Chary. Such is the situation, the only option left open to me is to set aside the order impugned in the writ petition and to remand the matter back to the Joint Collector to cause enquiry as provided under the provisions of A.P. Escheats and Bona Vacantia Act, 1974 before declaring the property of Madhava Chary as 'escheat' and 'bona vacantia'.

10. Accordingly, this writ petition is allowed setting aside the common order dated 13-9-2003 passed by Joint Collector, Ranga Reddy District in proceedings NO. D5/5814/1998 and D5/3727/2000 and the matter is remitted back to the Joint Collector to conduct enquiry or cause the enquiry conducted by the competent authority as contemplated under the Andhra Pradesh Escheats and Bona Vacantia Act, 1974 after due notice to the parties who are likely to be affected by such declaration and only after such enquiry, revisional authority can proceed further in the matter. No order as to costs.

_____

Justice B.Seshasayana Reddy

20th December, 2006.
KM

THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 25760 Of 2003

20th December, 2006

KM

---

[1] 2004(2) ALD 119